

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ASBESTOS PRODUCTS : Consolidated Under
LIABILITY LITIGATION (No. VI) : MDL DOCKET NO. 875
:
VARIOUS PLAINTIFFS : **FILED** :
:
MAY 12 2014 :
v. :
MICHAEL E. KUNZ, Clerk :
By _____ Dep. Clerk :
VARIOUS DEFENDANTS : Certain cases on the 02-md-875
Maritime Docket (MARDOC),
listed on the attached exhibits

O R D E R

AND NOW, this 12th day of May, 2014, after review of Certain Shipowner Defendants' Objections (ECF No. 4267) to the Report and Recommendation by Magistrate Judge Hey (ECF No. 4202) granting in part and denying in part Certain Shipowner Defendants' motion to dismiss¹ (ECF No. 3719), it is hereby **ORDERED** as follows:

- (1) The Report and Recommendation is **APPROVED** and **ADOPTED**;
- (2) Certain Shipowner Defendants' Objections to the Report and Recommendation are **OVERRULED**;
- (3) Certain Shipowner Defendants' motion is **DENIED**² as

¹ Defendants' motion is filed as a "motion for hearing." However, Defendants request that the Court dismiss the instant Plaintiffs' claims for improper service of process in the motion.

² In Bartel v. Various Defendants, 965 F. Supp. 2d 612, 625 (E.D. Pa. Aug. 26, 2013) (Robreno, J.), this Court denied certain defendants' motions to dismiss due to improper service of

process in various Group 1 MARDOC cases. The Court held that service of process was proper under Ohio law if the plaintiffs could produce sufficient proof "which verifies and confirms that through the mailing of the process papers, defendant received notice of the pending action." Id. (citing Piercey v. Miami Valley Ready-Mixed Pension Plan, 110 F.R.D. 294, 295 (S.D. Ohio 1986)). This Court determined that "a signed returned green card, evidencing receipt by defendant of the original process papers, serves as sufficient proof of service" under Ohio law and the law of the case. Id. at 626. The Court directed Magistrate Judge Hey to oversee the process of allowing the defendants to challenge the authenticity and genuineness of the green cards produced by the plaintiffs. Id. at 626 n.23.

On October 29, 2013, Judge Hey ordered the instant Plaintiffs to provide Defendants with copies of the certified green cards for all Group 1 cases where service was disputed by December 1, 2013. See ECF No. 3382. Defendants were given until December 16, 2013 to present any challenge to the authenticity and genuineness of any green card by filing a motion for hearing specifically identifying the defect. Id. On December 16, 2013, Defendants filed a "Motion Pursuant to Court's October 29, 2013 Order Concerning Plaintiffs' Evidence of Service of Process." See ECF No. 3719. Defendants alleged that "plaintiffs' production [did] not evidence service in any of the cases at issue, and accordingly the defendants in the cases at issue should be dismissed." Id. Plaintiffs responded to Defendants' motion on January 15, 2014 (ECF No. 3923), and Defendants replied on January 31, 2014 (ECF No. 4017).

On March 19, 2014, Judge Hey issued a Report and Recommendation as to Defendants' motion. See ECF No. 4202. Judge Hey recommended that Defendants' motion be granted in part and denied in part. Specifically, Judge Hey recommended (1) that the motion be denied where the plaintiff had produced a green card as to a specific defendant; and (2) the motion be granted - and the defendant be dismissed from the case - where the plaintiff had failed to produce a green card as to a specific defendant. Judge Hey further recommended that no ruling should be made on the cases governed by Michigan law.

Defendants timely filed objections to Judge Hey's Report and Recommendation on April 2, 2014. See ECF No. 4267. Specifically, Defendants state that (1) Plaintiffs' production of green cards does not satisfy their burden of establishing service of process upon Defendants; (2) Plaintiffs' evidence is

unreliable and is not verifiable; and (3) the service deadlines should not be extended in cases where a plaintiff did not serve a defendant within 120 days of the filing of the complaint. Plaintiffs responded to Defendants objections on April 17, 2014. See ECF No. 4289.

I. Legal Standard

A. Review of Report and Recommendation Upon Objections

The Court undertakes a de novo review of the portions of the Report and Recommendation to which a party has objected. See 28 U.S.C. § 636(b)(1) (2006 & Supp. V 2011); Cont'l Cas. Co. v. Dominick D'Andrea, Inc., 150 F.3d 245, 250 (3d Cir. 1998). The Court "may accept, reject or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1).

B. Motion to Dismiss based on Improper Service of Process

Under Federal Rule of Civil Procedure 4(m), "[i]f a defendant is not served within 120 days after the complaint is filed," then "the court . . . must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." The Third Circuit has interpreted this rule to mean that, even without good cause, the court can, in its discretion, provide additional time to cure rather than dismiss the defendants. Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1305 (3d Cir. 1995).

II. Certain Shipowner Defendants' Motion

A. Defendants' Arguments

Defendants first assert that the production of green cards by Plaintiffs does not establish that there was valid service of process upon each defendant. Defendants state that (1) Plaintiffs have not complied with the Piercey standard under Ohio law; and (2) Judge Lambros's Order regarding green cards did not become "law of the case." Accordingly, Defendants' assert that they were improperly served and should be dismissed from the cases.

Defendants next assert that the evidence submitted by

Plaintiffs is unreliable and not verifiable. Defendants allege that the internal database printouts and the affidavits submitted in connection with the green cards cannot be relied upon by this Court. Defendants state that "there is no way to verify the information presented, or to confirm that the 'green card' shown on the page does in fact pertain to service of the complaint for the plaintiff listed or starred."

Finally, Defendants assert the Court should dismiss all cases where service was not completed within 120 days of the filing of the complaint. Defendants state that "good cause" does not exist to extend the service deadlines, and the Court should not provide additional service time in the absence of good cause.

B. Plaintiffs' Arguments

Plaintiffs assert that they have complied with the Court's orders (and this Court's memorandum in Bartel) in producing green cards in the cases where service is disputed. Plaintiffs further state that good cause exists to cure any alleged defect regarding untimely service in cases where service was not completed in 120 days.

III. Analysis

Defendants first argue that the production of green cards does not satisfy Plaintiffs' burden of proving service of process as to each defendant. This argument was explicitly rejected in Bartel and will not be revisited by this Court. Defendants next argue that the evidence relied upon by Plaintiffs is unreliable and not verifiable. This Court disagrees. In the cases listed in Exhibit "A," Plaintiffs have produced the required green cards which are sufficient to satisfy Plaintiffs' burden of proving service of process as to each defendant. In Bartel, this Court held that, "a signed returned green card, evidencing receipt by defendant of the original process papers, serves as sufficient proof of service to satisfy the verification requirements of Ohio Rule 4.3(B)(1)." 965 F. Supp. 2d at 626. As Judge Hey noted, "the plaintiffs have provided exactly that information." See ECF No. 4202 at 15.

Finally, Defendants allege that Judge Hey was incorrect in recommending that the Court extend the time to serve Defendants, in certain cases, nunc pro tunc. Defendants assert that service of process occurred outside the 120 day time-frame permitted by Federal Rule of Civil Procedure 4(m), and no good

to the claims listed in Exhibit "A";

- (4) Certain Shipowner Defendants' motion is **GRANTED**³ as to the claims listed in Exhibit "B," and the listed defendants are **DISMISSED** from the specified cases;
- (5) Certain Shipowner Defendants' motion is **DENIED** **without prejudice**⁴ as to the claims listed in

cause exists to extend the time for service to occur. Accordingly, Defendant asserts that these claims should be dismissed. Plaintiffs' do not dispute that Defendants were untimely served in certain cases. However, Plaintiffs assert that Defendants will not be prejudiced if the Court permits Plaintiffs to cure the defect of belated service of process. As Judge Hey noted, the court can, in its discretion, provide additional time to cure rather than dismiss the defendants. See Petrucelli v. Bohringer & Ratzinger, 46 F.3d 1298, 1305 (3d Cir. 1995). Given that Plaintiffs have provided green cards for these cases evidencing that Defendants were put on actual notice of the pending action, the unique procedural posture of these MARDOC cases in MDL 875, and the lack of prejudice to Defendants, the Court determines that any defect pertaining to untimely service of process in these cases may be cured by this Court extending the time for Plaintiff to serve Defendants, nunc pro tunc, so that service is considered timely in each case. See McCurdey v. Am. Bd. of Plastic Surgery, 157 F.3d 191, 196 (3d Cir. 1998).

Accordingly, Defendants' motion is denied in the cases and claims listed in Exhibit "A" as Plaintiff has provided sufficient evidence of service of process as to each defendant.

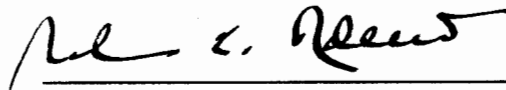
³ No objections were made as to the Court dismissing these claims as the plaintiff failed to produce a green card to the Court.

⁴ Judge Hey recommended that no action be taken as to these cases which are governed by Michigan law. No objection was made as to this recommendation. The Court has not reached the issue of improper service of process under Michigan law and the defendants' original motions to dismiss remain pending. Accordingly, the instant motions are denied without prejudice at this time as they are duplicative of the defendants' original motions to dismiss.

Exhibit "C."

It is further **ORDERED** that Plaintiff's Motion for Reconsideration (ECF No. 4262, cross-filed on No. 11-32827, ECF No. 195) is **GRANTED**.⁵

AND IT IS SO ORDERED.



EDUARDO C. ROBRENO, J.

⁵ Judge Hey had recommended that this claim (Tedder, No. 11-32827, moving Defendant - Sinclair Refining Company) be dismissed because Plaintiff had failed to produce a green card as to the moving Defendant. Plaintiff timely moved for reconsideration of this recommendation after locating the missing green card. Plaintiff's motion for reconsideration was not opposed. Accordingly, Plaintiff's motion for reconsideration is granted. Because Plaintiff has located the green card, the case is included on Exhibit "A" of this order.

Exhibit A

Last, First, Initial	E.D.P.A. Case Number	Defendant Name
Vetsikas, Dimitrios	09-30270	Arco
Vetsikas, Dimitrios	09-30270	Arco Marine Inc.
Vetsikas, Dimitrios	09-30270	Arco Transportation
Vetsikas, Dimitrios	09-30270	Atlantic Richfield Co.
Jeffries, John W	09-30303	Atlantic Refining Company
Jeffries, John W	09-30303	Atlantic Richfield Co.
Clements, Joseph A	09-91137	Sinclair Refining Company
Loftin, Henry W	09-91201	Sinclair Refining Company
Perna, Joseph C	10-30028	Arco
Perna, Joseph C	10-30028	Arco Marine Inc.
Perna, Joseph C	10-30028	Arco Transportation
Perna, Joseph C	10-30028	Atlantic Richfield Co.
Buckland, John	10-30040	Atlantic Refining Company
Batura, Francis	11-30132	Arco Marine Inc.
Batura, Francis	11-30132	Arco Transportation
Batura, Francis	11-30132	Atlantic Richfield Co.
Booker, Willie	11-30165	Sinclair Oil Company
Booker, Willie	11-30165	Sinclair Refining Company
Brown, Edward W	11-30186	Sinclair Refining Company
Campagnini, Santino	11-30210	Sinclair Refining Company
Fexer Sr., Harley B	11-30253	Sinclair Refining Company
Gallegos, Oscar M	11-30283	Sinclair Refining Company
Cutting, Fredric A	11-30322	Arco
Cutting, Fredric A	11-30322	Arco Marine Inc.
Cutting, Fredric A	11-30322	Atlantic Refining Company
Cutting, Fredric A	11-30322	Atlantic Richfield Co.
Davis, Corbert E	11-30332	Sinclair Oil Corp.
Davis, Corbert E	11-30332	Sinclair Refining Company
Dempster, Laurence S	11-30347	Conoco Inc.
Dempster, Laurence S	11-30347	Continental Steamship Co.
Gomes, Manuel J	11-30370	Sinclair Refining Company

Guillory, Joseph F	11-30394	Sinclair Refining Company
Hardeman, Jr., Freddie D	11-30411	Sinclair Oil Company
Hart, Charles L	11-30417	Conoco Inc.
Hart, Charles L	11-30417	Continental Steamship Co.
Hernandez, Jesse M	11-30432	Sinclair Oil Company
Hernandez, Jesse M	11-30432	Sinclair Oil Corp.
Hernandez, Jesse M	11-30432	Sinclair Refining Company
Holmes, Warren W	11-30443	Sinclair Refining Company
Elliott, Andrew	11-30460	Sinclair Refining Company
Enfinger, David L	11-30463	Conoco Inc.
Enfinger, David L	11-30463	Continental Steamship Co.
English, John R	11-30464	Sinclair Refining Company
Martin, Vancil S	11-30482	Sinclair Refining Company
Martinez, Francisco R	11-30485	Sinclair Oil Company
Martinez, Francisco R	11-30485	Sinclair Refining Company
McCabe, Paul S	11-30491	Richfield Oil Corporation
McGee, Anthony	11-30506	Atlantic Refining Company
McKaig, Jr., James B	11-30509	Atlantic Refining Company
Palys, Douglas J	11-30601	Arco
Palys, Douglas J	11-30601	Arco Marine Inc.
Pasilong, Sergio L	11-30608	Atlantic Richfield Co.
Paul, Louis B	11-30609	Sinclair Refining Company
Hopkins, Lawrence	11-30617	Sinclair Refining Company
Johnson, Alvin	11-30650	Sinclair Refining Company
Jordan, Homer L	11-30667	Sinclair Refining Company
Larson, Carl T	11-30699	Richfield Oil Corporation
Stigler, Jr., Joseph	11-30754	Sinclair Oil Corp.
Truesdell, John L	11-30788	Sinclair Refining Company
Welty, Karl F	11-30835	Richfield Oil Corporation
Pires, Joaquim J	11-30893	Arco Marine Inc.
Raines, Robert F	11-30916	Sinclair Refining Company
Rogers, Jr., Edward	11-30941	Sinclair Refining Company
Smith, Francis H	11-31010	Atlantic Refining Company
Smith, Samuel	11-31014	Sinclair Oil Corp.
Arceneaux, Claude	11-31025	Sinclair Refining Company

Artis, Clarence	11-31027	Conoco Inc.
Artis, Clarence	11-31027	Continental Steamship Co.
Artis, Clarence	11-31027	Sinclair Refining Company
Boden, Henry E	11-31030	Atlantic Refining Company
Carlson, Edwin	11-31047	Atlantic Refining Company
Catacalos, Louis S	11-31056	Sinclair Refining Company
Trahan, James	11-31088	Sinclair Refining Company
Woodson, Ocie J	11-31105	Sinclair Refining Company
Resendez, Manuel V	11-31152	Conoco Inc.
Resendez, Manuel V	11-31152	Continental Steamship Co.
Hartwell, Theodore R	11-31226	Sinclair Oil Corp.
Hartwell, Theodore R	11-31226	Sinclair Refining Company
Fruge, Jesse	11-31286	Continental Steamship Co.
Fruge, Jesse	11-31286	Sinclair Refining Company
McDade, Joseph R	11-31308	Sinclair Refining Company
Edwards, Jr., Price	11-31365	Conoco Inc.
Edwards, Jr., Price	11-31365	Continental Oil Company
Edwards, Jr., Price	11-31365	Harcon S.S. Co., Inc.
Edwards, Jr., Price	11-31365	Sinclair Refining Company
Fowler, Marvin P	11-31496	Conoco Inc.
Fowler, Marvin P	11-31496	Continental Steamship Co.
Fowler, Marvin P	11-31496	Sinclair Oil Corp.
Fowler, Marvin P	11-31496	Sinclair Refining Company
Freeman, Harry E	11-31497	Atlantic Refining Company
Harmond, Reuben	11-31528	Conoco Inc.
Harmond, Reuben	11-31528	Continental Oil Company
Harmond, Reuben	11-31528	Sinclair Refining Company
Kintana, Rodolfo	11-31558	Sinclair Refining Company
Stratton, William A	11-31669	Sinclair Refining Company
Guy, William H	11-31728	Sinclair Refining Company
Atson, James R	11-31734	Sinclair Refining Company
Taman, William T	11-31748	Sinclair Refining Company
Briggs, Reda D	11-31828	Sinclair Refining Company
Wilcox, William A	11-31837	Conoco Inc.
Wilcox, William A	11-31837	Continental Steamship Co.

Perez, Rafael F	11-31853	Sinclair Oil Company
Highsmith, Donald L	11-31855	Conoco Inc.
Highsmith, Donald L	11-31855	Continental Steamship Co.
Dallas, Thomas T	11-31864	Sinclair Refining Company
Johnson, William O	11-31879	Sinclair Oil Company
Johnson, William O	11-31879	Sinclair Refining Company
Gordon, Washington T	11-31888	Sinclair Refining Company
Hooten, Charles E	11-31901	Sinclair Refining Company
Miller, Russell K	11-31912	Sinclair Refining Company
Dew, Billy M	11-31919	Sinclair Refining Company
Evans Jr., James P	11-31925	Sinclair Oil Company
Evans Jr., James P	11-31925	Sinclair Refining Company
Taylor, James D	11-31944	Sinclair Oil Company
Taylor, James D	11-31944	Sinclair Refining Company
Duarte, John	11-32033	Sinclair Refining Company
Franklin, J B	11-32039	Sinclair Refining Company
Turner, Wayland	11-32064	Sinclair Oil Corp.
Thomas, Elijah	11-32065	Sinclair Refining Company
Hawkins, Clarence W	11-32133	Atlantic Refining Company
Bagby, Garner L	11-32136	Sinclair Oil Corp.
Bagby, Garner L	11-32136	Sinclair Refining Company
Sullivan, Thomas J	11-32177	Conoco Inc.
Sullivan, Thomas J	11-32177	Continental Steamship Co.
Manuel, Wilfred	11-32185	Sinclair Refining Company
Davis Jr., Foster	11-32186	Sinclair Oil Corp.
Davis Jr., Foster	11-32186	Sinclair Refining Company
Worthy, Paul L	11-32232	Atlantic Richfield Co.
Guyton, Royce A	11-32247	Sinclair Refining Company
Suits, John F	11-32278	Harcon S.S. Co., Inc.
Suits, John F	11-32278	Sinclair Refining Company
Orchard, John P	11-32293	Sinclair Refining Company
Wilson, Len	11-32309	Conoco Inc.
Wilson, Len	11-32309	Continental Oil Company
Sutliff, Arthur L	11-32316	Sinclair Refining Company
Dianna, Emerick M	11-32335	Atlantic Refining Company

Henry, Rudolph E	11-32346	Sinclair Refining Company
Bustamante, Paul L	11-32360	Sinclair Refining Company
Bell, Charles J	11-32381	Sinclair Oil Corp.
Bell, Charles J	11-32381	Sinclair Refining Company
Richardson, William L	11-32391	Sinclair Oil Company
Richardson, William L	11-32391	Sinclair Refining Company
Lachappelle, Eugene	11-32478	Atlantic Refining Company
Steptoe Jr., Jessie	11-32560	Sinclair Refining Company
Molitor, Rudolph G	11-32592	Atlantic Refining Company
Woods, Daniel L	11-32594	Conoco Inc.
Woods, Daniel L	11-32594	Continental Oil Company
Woods, Daniel L	11-32594	Sinclair Oil Corp.
Woods, Daniel L	11-32594	Sinclair Refining Company
Ingebretsen, Wesley K	11-32601	Western Hemisphere Corp.
Grossman, Jacob A	11-32653	Sinclair Refining Company
Brown, Sr., Alexander	11-32660	Harcon S.S. Co., Inc.
Brown, Sr., Alexander	11-32660	Sinclair Oil Company
Brown, Sr., Alexander	11-32660	Sinclair Refining Company
Bise, James E	11-32679	Sinclair Refining Company
Todd, Fred B	11-32764	Atlantic Refining Company
Todd, Fred B	11-32764	Sinclair Refining Company
Dodd, Rubel R	11-32883	Sinclair Refining Company
Keys Jr., Daniel	11-32884	Arco Marine Inc.
Kennedy, Arthur J	11-32901	Sinclair Oil Company
Kennedy, Arthur J	11-32901	Sinclair Refining Company
Cook, William A	11-32909	Sinclair Refining Company
Bruce, Charles	11-32943	Conoco Inc.
Bruce, Charles	11-32943	Continental Oil Company
Kempton, Benjamin E	11-32984	Sinclair Refining Company
Rodriguez-Diaz, Miguel A	11-33009	Sinclair Oil Corp.
Rodriguez-Diaz, Miguel A	11-33009	Sinclair Refining Company
Brathwaite, James	11-33043	Conoco Inc.
Brathwaite, James	11-33043	Continental Oil Company
Biasi, Joseph	11-33116	Harcon S.S. Co., Inc.
Price, Clyde L	11-33155	Richfield Oil Corporation

Fernandez, Edward	11-33169	Atlantic Richfield Co.
Ferrell, William L	11-33173	Sinclair Refining Company
Linscomb, Simul D	11-33240	Sinclair Oil Corp.
Linscomb, Simul D	11-33240	Sinclair Refining Company
Zupanovic, Anthony N	11-33296	Sinclair Refining Company
Meade, Donald T	11-33334	Atlantic Refining Company
Artis, Fred D	11-33457	Sinclair Refining Company
Hansen, Sr., Fred	11-33520	Sinclair Navigation Company
Whitfield, James F	11-33594	Atlantic Refining Company
Darling, Frank L	11-33620	Conoco Inc.
Darling, Frank L	11-33620	Continental Steamship Co.
Damon Sr., Francis H	11-33623	Continental Oil Company
Prather, Donez L	11-33637	Sinclair Oil Corp.
Preston, Michael J	11-33799	Continental Oil Company
Preston, Michael J	11-33799	Sinclair Oil Corp.
Preston, Michael J	11-33799	Sinclair Refining Company
Jacobson, Jason A	11-33888	Conoco Inc.
Jacobson, Jason A	11-33888	Continental Oil Company
Jacobson, Jason A	11-33888	Harcon S.S. Co., Inc.
Daly, Daniel J	11-37937	Atlantic Richfield Co.
Daly, Daniel J	11-37937	BP Corporation N.A.
Daly, Daniel J	11-37937	Sinclair Oil Corp.
Daly, Daniel J	11-37937	Sinclair Refining Company
Ramirez, Jose A	11-55853	Sinclair Refining Company
Bradwell, Richard M	11-56823	Continental Oil Company
Bradwell, Richard M	11-56823	Sinclair Oil Company
Bradwell, Richard M	11-56823	Sinclair Refining Company
Kirkland, James R	11-58359	Sinclair Refining Company
Tedder, Paul T	11-32827	Sinclair Refining Company

Exhibit B

Last, First, Initial	E.D.P.A. Case Number	Defendant Name
Sutherland, Arthur A	11-33165	Sinclair Refining Company
Watson, Ernest A	11-33470	Sinclair Refining Company
Jacobson, Jason A	11-33888	Sinclair Refining Company

Exhibit C

Last, First, Initial	E.D.P.A. Case Number	Defendant Name
Schroeder, William D	11-32774	Sinclair Refining Company
Smith, Robert A	11-33516	Atlantic Refining Company
Smith, Robert A	11-33516	Conco Oil Co.
Hansen, Sr., Fred	11-33520	Sinclair Refining Company